IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 15739 of 2004

Between:

R.M. Khayum, S/o. Sri R.M. Jaffar Sab, Muslim,
R/o. 26-4-806, Near Shanthi Talkies, Hindupur, Ananthapur District.

... **PETITIONER**

AND

1 The Secretary, Regional Transport Authority,
Anantapur, Anantapur District.
2 Sri V.M. Abuzur, S/o. Sri V.M. Yunus, Muslim,
R/o. 16-12-1, Tippukhan Street, Hindupur, Anantapur District.

...**RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order of direction, one in the nature of Writ of Certiorari, to call for the records from the 1st respondent in his R.No. 2468/A2/2002, dt.21-7-2004 issuing extension of the route Hindupur Municipal Bus Stand to Manesamudram up to Maluguru from Manesamudram with timings at 7-30 AM at Maluguru, in respect of the bus AP 02V-1362, belonging to the 2nd respondent herein and quash it and to grant any such other order or orders as this Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.T.Venkata Ramana

Counsel for the Respondent No. 1: G.P. for Transport

Counsel for Respondent No.2: Sri E. Maruthi Raja

The Court at the admission stage made the following:

ORDER:

1. The writ petitioner is a bus operator having a pucca stage carriage permit, which was granted in the year 1998, on the town service route covering a distance of 8.3 kms. from Hindupur Municipal Bus Stand to Manesamudram. He was permitted to run the bus with 12 single trips per day. The petitioner made an application to modify the permit and to run the bus from Hindupur Municipal Bus Stand to Maluguru by extending the permit from Manesamudram to Maluguru covering a distance of 5.7 kms. The Regional Transport Authority, Anantapur through its resolution dated 17-9-1999 referred the said application to the Government of Andhra Pradesh for appropriate orders and the same is pending before the Government. While so, in the year 2002 the petitioner applied to the first respondent for grant of temporary permit on the portion from Manesamudram to Muluguru in continuation of his existing permit and the first respondent rejected the same. The petitioner filed R.P.No.59 of 2002 before the State Transport Appellate Tribunal, Hyderabad. The tribunal allowed the said petition on 3-10-2002 and remitted the matter back to the first respondent for re-consideration of the matter. The Regional Transport Authority, Anantapur through its order dated 12-3-2003 granted temporary variation of the condition of his original permit by extending the route from Manesamudram to Maluguru and directed the first respondent to issue tentative timings. Accordingly, the first respondent granted temporary extension from Manesamudram to Maluguru and the temporary extension granted initially on 7-5-2003 for a period of four months was extended from time to time and the last extension granted is valid up to 6-9-2004. As per the said extension order, the petitioner is starting his bus at Maluguru at 7-45 a.m. towards Hindupur Municipal Bus Stand. The second respondent who was also granted a pucca stage carriage permit in the year 2001 on the above route from Hindupur Municipal Bus Stand to

Manesamudram began running his bus on the portion from Manesamudram to Maluguru in continuation of running it on the above route from the last week of July 2004 with the starting time at Maluguru at 7-30 a.m. thereby affecting the petitioner by taking all the passengers meant for his bus starting at 7-45 a.m. at Maluguru. The petitioner on enquiries came to know that the first respondent through the order dated 21-7-2004 allowed the bus of the second respondent to ply on the above portion with tentative timings on pucca permit valid up to 28-9-2006. The petitioner contends that the first respondent in order to help the second respondent issued the permit by granting pucca extension of permit on the above portion with advanced timings i.e., to start the bus of the second respondent at Maluguru at 7-30 a.m. only in order to do harm to the petitioner, who is the oldest operator starting the bus at 7-45 a.m. at Maluguru, without holding timings conference and without notice to the petitioner. The petitioner further contended that a recent granteee of a permit cannot have advanced timings for his bus over the timings of the existing operator. In support of his contention he relied on the decision of the Mysore Bench of the Karnataka High Court in **M.Akbar v. Mys.S.T.A.T**. He therefore contends that the order of the first respondent dated 21-7-2004 granting pucca permit extending the town service permit from Mansamudram to Maluguru to the second respondent with 7-30 a.m. as the starting time of the bus at Maluguru is illegal and violative of the principles of natural justice and therefore approached this Court seeking to declare the said order as illegal and arbitrary and to quash the same by allowing the writ petition.

2. The second respondent filed a counter contending that the petitioner has no locus standi to file the present writ petition. In support of the said contention he relied on a Full Bench decision of this High Court in **Secretary, R.T.A., Guntur v. E. Rama Rao**.

3. The second respondent further contended that the impugned order of the first respondent is the consequential order pursuant to the order of the State Transport Appellate Tribunal, Hyderabad dated

14-5-2004 in R.P.No.245 of 2003. The petitioner without questioning the order of the tribunal cannot question the order passed by the first respondent. Even if the timings of the buses are clashing, the petitioner cannot straight away file the writ petition under Article 226 of the Constitution of India without availing the various alternative remedies before the authorities concerned. The writ petition is therefore liable to be dismissed.

4. In the year 1998 the petitioner made an application for alteration of his pucca stage carriage permit on the town service route and the same is pending consideration of the Government. In pursuance of the orders of the tribunal the petitioner was granted temporary permit for the extended route from Manesamudram to Maluguru and it was being extended from time to time and the latest extension granted on 4-9-2004 is valid from 7-9-2004 to 6-1-2005. The second respondent was granted a pucca stage carriage permit extending the route from Manesamudram to Maluguru and he is plying the bus on the said route from the last week of July 2004. The only grievance of the petitioner is regarding the starting time of the bus of the second respondent at Maluguru, which is starting 15 minutes in advance to the starting of the bus of the petitioner at 7-45 a.m. The learned counsel for the petitioner contended that since there is only 15 minutes gap between the timings of the buses of the petitioner and the second respondent, the second respondent is taking away all the passengers in the route, which is resulting in loss to the petitioner. The first respondent cannot grant such timings to the second respondent without a conference between the parties on the timings issue and without giving notice to the petitioner while passing an order. In support of his contention he relied on the judgments of this High Court, Karnataka High Court and the Supreme Court viz., **M. Akbar** (1 supra), **Mithilesh Garg v. Union of India**, **Coastal Papers Ltd., v. Govt. of India**, **Meerja Hameedullah Baig v. RTA, South Zone, Hyd.**. I have perused the above judgments. They are not related to the issue involved in the present case regarding the clash of timings; therefore, they are not applicable to the

facts of this case.

5. The learned counsel for the second respondent contended that even if there is any clash in the timings of operation of the buses, the petitioner instead of making an application to the first respondent, cannot straight away approach this Court through this writ petition without availing the alternative remedy provided under the Motor Vehicles Act. In support of his contention, the learned counsel relied on various decisions of this High Court viz., **E. Rama Rao** (2 supra), **Rajappa Kawati v. G. Hanumantha Rao**, **Rehana Begum v. Joint Transport Commr. & Secretary**, **P. Nazir Ahmed v. Joint Transport Commissioner and Secretary**, and **Gopal Shankar v. Secretary, State Transport Authority**.

6. I have perused the above decisions of this High Court. In the above decisions, the questions relating to the granting of stage carriage permit and the locus standi of the existing operator were considered. In view of the above judgments of this High Court, the petitioner has to exhaust the remedies provided under the Motor Vehicles Act before approaching this Court by making a representation to the authorities concerned. Had the petitioner made a representation, the first respondent would have examined the issue after examining the questions viz., 1) whether there is any clash in timings of the buses of the petitioner and of the second respondent on the route in question,

2) whether the time gap between the plying of the buses of the second respondent and the petitioner is not sufficient, 3) whether there is any statistical data available to show that after passing of the bus of the second respondent, no passengers are remaining to board the petitioner's bus etc., and decided the same on merits. The petitioner instead of making a representation to the first respondent has directly approached this Court. This is not a case where the constitutionality of any provision under the Act is under challenge, which cannot be decided by the statutory authority and the writ court alone has to entertain the same. The petitioner has not made out any case in his favour thereby compelling this Court to directly interfere in the matter by invoking the extraordinary writ

jurisdiction. This is a fit case where the petitioner has to approach the first respondent explaining the circumstances under which the timings are liable to be revised. The writ petition is therefore not maintainable and is liable to be dismissed.

7. Even on merits, the clash of timings among the operators of the buses viz., the petitioner and the second respondent and that the second respondent taking away the passengers in his bus by proceeding 15 minutes in advance to the timing of the petitioner's bus thereby causing loss to the petitioner are the questions of fact which cannot be decided by a writ court. Even on this ground also, the writ petition is liable to be dismissed.

8. In this writ petition, the petitioner sought for the relief of quashing the order of the first respondent dated 21-7-2004. It cannot be maintained in the light of the decisions cited by the learned counsel for the second respondent.

9. The petitioner, if so advised, is at liberty to approach the first respondent regarding clash of timings of his bus with the bus of the second respondent.

10. In the light of the above discussion, and in the light of the Full Bench decision of this Court in **E. Rama Rao** (2 supra) and a Division Bench decision in **Rajappa Kawati** (6 supra), the writ petition is not maintainable and the same is accordingly dismissed.

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(Dr.G.Yethirajulu, J)

12th October 2004.

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Regional Transport Authority, Anantapur, Anantapur District.
2. The Government Pleader for Transport.
3. Sri E. Maruthi Raja, Advocate (OPUC)
4. Sri T. Venkata Ramana, Advocate (OPUC)
5. 2 CD copies